

This Opinion is not a
Precedent of the TTAB

Mailed: March 18, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Sea Lion S.R.L.
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Serial No. 88980119
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Anthony P. Venturino of Vorys, Sater, Seymour and Pease LLP,
for Sea Lion S.R.L.

Katherine Stoides, Trademark Examining Attorney, Law Office 101,
Zachary R. Sparer, Managing Attorney.

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Before Wellington, Goodman and English,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Sea Lion S.R.L. (“Applicant”) seeks registration on the Principal Register of the
mark shown below for

“Duffel bags, luggage, tote bags, briefcases, leather key holders being
key cases, briefcase type portfolios and all purpose carrying bags in
the nature of carrying pouches” in International Class 18.¹

¹ Application Serial No. 88980119 was filed on April 10, 2020, based upon Applicant’s
assertion of a bona fide intention to use the mark in commerce under Section 1(b) of the
Trademark Act, 15 U.S.C. § 1051(b). The provided description of the mark states “The mark
consists of the word ‘WALLY’ in stylized form above a figure symboli[zi]ng a sail.” Color is
not claimed as a feature of the mark.



The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on the following two registered marks owned by two different registrants:

WALLY (standard characters) for "Wallets with card compartments" in International Class 18.²

WALLY (typed drawing) for "garment bags for travel and hanger clamps for use with such bags" in International Class 18.³

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

This application is a child application from the parent application Serial No. 88866994. January 11, 2021 Notice that Request for Division is Completed.

Page references to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system.

Applicant's brief is at 7 TTABVUE and the Examining Attorney's brief is at 9 TTABVUE.

² Registration No. 5140603. Issued February 14, 2017.

³ Registration No. 1552880. Issued August 22, 1989; second renewal.

Effective November 2, 2003, Trademark Rule 2.52, 37 C.F.R. § 2.52, was amended to replace the term "typed" drawing with "standard character" drawing. A mark depicted as a typed drawing is the legal equivalent of a standard character mark. *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1236 n.5 (TTAB 2015) (citing TBMP § 807.03(i)).

I. Evidentiary Issue

Before proceeding to the merits of the refusal, we address an evidentiary matter.

Applicant has attached to its brief dictionary definitions for the word “luggage.” Although Applicant did not request judicial notice of these definitions, we take judicial notice of them, as it is well settled that the Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J. C. Gourmet Food Imps. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). *See also In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

II. Due Process Challenge

Applicant argues that on “due process grounds” the Board should limit the refusal “if the Board agrees with the Examining Attorney that consumer confusion is likely.”

7 TTABVUE 4. Applicant explains its position as follows:

[I]t would be inequitable for the Board to refuse the Application for all of the goods in Class 18. The Examining Attorney has been vague about the goods that caused her concern and only called certain goods in Applicant’s claims which Applicant then agreed to delete. To now refuse the Application for all of the goods in Class 18 would deny Applicant its procedural due process to both (i) understand all of the reasons for the refusal and (ii) to respond completely to the Examining Attorney’s reasons for such refusals. Because Applicant has not had a fair opportunity to respond even though Applicant has preemptively addressed the issue more than once, the Board should at least approve the Application for all of the remaining Class 18 goods not previously addressed by the Examining Attorney. 7 TTABVUE 12.

Applicant argues that the Examining Attorney failed to consider the deletion of “wallets” and “traveling bags” from the identification of goods and did not specifically explain why all the remaining goods were related. However, the Examining Attorney did consider the amended identification but was not persuaded. *Cf. In re Miracle*

Tuesday LLC, 695 F.3d 1339, 104 USPQ2d 1330, 1336 (Fed. Cir. 2012) (“the mere fact that the Board did not recite all of the evidence it considered does not mean the evidence was not, in fact, reviewed”). In the denial of reconsideration, the Examining Attorney indicated that she still found Registrants’ goods related to Applicant’s amended identification of goods, referencing third-party registrations and Internet evidence submitted with her denial. August 4, 2021 Denial of Reconsideration at TSDR 1. The Examining Attorney also indicated her position that the goods in Applicant’s identification were all cases or containers and explained that Applicant’s goods are “similar or complementary in terms of purpose or function” to Registrants’ goods. January 14, 2021 Office Action at TSDR 1.

Accordingly, Applicant’s argument regarding a lack of due process is rejected. Applicant has had an opportunity to address the arguments made in the denial of reconsideration on appeal. In any event, it is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item of identified goods within that class in the application or cited registration. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981). Therefore, it was not necessary that the Examining Attorney specifically identify and find each item in the amended identification of goods related to Registrants’ goods.

III. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or to deceive. 15 U.S.C.

§ 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). These factors and others are discussed below.

A. Strength or Weakness of the Registered Marks

Applicant argues that the cited marks “are owned by two different companies” and submits that “[i]f these marks can coexist for multiple years without a likelihood of consumer confusion even though both claim related goods in Class 18, there is no logical reason why the Applicant’s WALLY mark cannot coexist without causing consumer confusion.” 7 TTABVUE 5.

Applicant’s argument presumes that the prior registration of a particular term should be of some persuasive authority in handling later applications involving similar marks. However, decisions on prior applications do not dictate a particular result; we are bound to make a decision based on the record before us. *See In re Nett*

Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001); *Mattel, Inc. v. Funline Merch. Co., Inc.*, 81 USPQ2d 1372, 1375 (TTAB 2006). In addition, the fact that these marks co-exist on the register does not prove they co-exist without any confusion in the marketplace.⁴

To the extent that Applicant is arguing that the prior co-existence of the two WALLY marks on the register shows that consumers know these marks and are able to distinguish between them in the marketplace, the relevant consideration is whether the marks are in use in commerce. While third-party registrations may be used in the manner of a dictionary to demonstrate conceptual weakness, *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015), third-party registrations are not evidence of use of the marks. See *AMF Inc. v. American Leisure Prods., Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973). Therefore, the two cited registrations do not establish marketplace weakness of the term WALLY.

To the extent Applicant is arguing that the registration of these two marks allows for co-existence on the register of an additional WALLY mark that includes a design, we find these two co-existing registrations are not of a sufficient volume to show conceptual weakness of WALLY. Cf. *In re Mr. Recipe*, 118 USPQ2d 1084, 1089 (TTAB 2016) (“one registered mark (different from the one cited herein) is not sufficient to

⁴ There might be a reason that the marks co-exist on the register, but that reason is not readily apparent from the face of the registrations. Additionally, even if purchasers were aware of co-existing marks, this does not negate the fact that purchasers may presume that the goods identified under the same mark are offered by the same entity.

establish that the term ... [is] diluted for purposes of determining the strength of the registered mark and ...absent evidence of actual use, one third-party registration has little probative value, especially in the absence of evidence that the mark is in use on a commercial scale or that the public has become familiar with it”).

Therefore, we do not find that WALLY is conceptually or commercially weak. The *DuPont* factors that are directed to conceptual strength and marketplace weakness are neutral.

B. Similarity of the Marks

We next turn to the first *DuPont* factor which requires us to determine the similarity or dissimilarity of the marks when viewed in their entirety in terms of appearance, sound, connotation and overall commercial impression. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). The test, under the first *DuPont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. While the marks must be considered in their entirety, “in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entirety.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Where both words and a design comprise the mark (as in Applicant's mark), the words are normally accorded greater weight because the words are likely to make an impression upon purchasers, would be remembered by them, and would be used by them to request the goods. *CBS, Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983) ("in a composite mark comprising a design and words, the verbal portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed"); *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987).



Applicant's mark is  and both marks in Registration No. 5140603 and Registration No. 73747365 are WALLY (standard characters or typed drawing). The registered marks are not limited to any particular font style, color, or size of display. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 15 637 F.3d 1344 , 98 USPQ2d 1253, 1259 (Fed. Cir. 2011) (standard character registrations "are federal mark registrations that make no claim to any particular font style, color, or size of display and, thus, are not limited to any particular presentation," citing 37 C.F.R. § 2.52).

The sail design of Applicant's mark is not entwined with, or superimposed over the word WALLY, but appears below it. The sail design is subordinate to the word WALLY and is not so prominent or striking that it draws attention away from the word WALLY. Accordingly, the word WALLY is the dominant element of Applicant's WALLY and design mark. The dominant feature of Applicant's mark, WALLY, is identical in sound, appearance, meaning and commercial impression to the cited marks WALLY.

Applicant's mark incorporates the cited marks in their entirety. Notwithstanding Applicant's design element, when we consider Applicant's mark in its entirety with the cited marks, we find that Applicant's mark is similar in sound, appearance, meaning and commercial impression to them. *See, e.g., In re Viterra Inc.*, 671 F.2d 1358, 101 USPQ2d 1905, 1911 (Fed. Cir. 2012) (affirming the Board's finding that the wording X-SEED was the dominant portion of Opposer's X-SEED and design mark: "This is not a case, therefore, where a larger design is separate and independent from the literal features of the mark."); *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002) ("Because the impact of the design in the overall commercial impression is minor when compared with the words, a consumer viewing Herbko's mark would attach greater significance to the words CROSSWORD COMPANION than to the crossword puzzle design."); *CBS Inc. v. Morrow*, 218 USPQ at 200 ("[M]inor design features do not necessarily obviate likelihood of confusion arising from consideration of the marks in their entirety.").

This *DuPont* factor weighs in favor of finding a likelihood of confusion.

C. Similarity or Dissimilarity of the Goods

We next consider the second *DuPont* factor, "[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration." *DuPont*, 177 USPQ at 567. *See also Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-63 (Fed. Cir. 2014). The goods need not be identical or even competitive to find a likelihood of confusion. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc.*

v. Becton, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that the goods emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). Under this *DuPont* factor, the Examining Attorney need not prove, and we need not find, similarity as to each product listed in the description of goods. As indicated, “it is sufficient for finding a likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application.” *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015).

Applicant’s goods are “Duffel bags, luggage, tote bags, briefcases, leather key holders being key cases, briefcase type portfolios and all purpose carrying bags in the nature of carrying pouches.”

The goods in Registration No. 1552880 are “garment bags for travel and hanger clamps for use with such bags.” The goods in Registration No. 5140603 are “wallets with card compartments.”

The Examining Attorney argues that “the refusal is not restricted to the goods that have been deleted (traveling bags and wallets) and submits that “applicant’s goods, as currently identified, are related to the registrants’ goods as they are all intended to be used in carrying one’s possessions during travel and otherwise.” 9 TTABVue 7. The Examining Attorney references the evidence of record and the

definition of “luggage” as supporting her position as well as the third-party registration and third-party website evidence.⁵ 9 TTABVUE 7. August 4, 2021 Denial of Reconsideration at TSDR 2-13; 15-78. January 14, 2021 Office Action at TSDR 2-16.

In response, Applicant argues that the Examining Attorney failed to address the relatedness of the goods in the amended identification “in a substantive manner” and that the Examining Attorney is only focusing her claim on Applicant’s luggage, listed as a good in Applicant’s amended identification. 7 TTABVUE 5-6.

We find the goods in Registration No. 1552880 are legally identical in part and related to Applicant’s goods. The wording “luggage” in Applicant’s identification is broad enough to include “garment bags for travel” listed in Registration No. 1552880.⁶ In addition, the third-party website evidence shows that garment bags can be convertible and in the form of duffel bags and labeled as such. January 14, 2021 Office Action at TSDR 7; August 4, 2021 Denial of Reconsideration at TSDR 11. Therefore, the wording garment bags for travel in the cited registration encompasses garment bags in the form of duffel bags, and Applicant’s duffel bags could encompass

⁵ Luggage is defined as “suitcases; trunks etc; baggage” and “something that is lugged, especially suitcases for traveler’s belongings : baggage.” Collins English Dictionary, dictionary.com; Merriam-Webster Dictionary, merriam-webster.com. Applicant’s brief, 7 TTABVUE 16. Luggage is also defined as “containers for a traveler’s belongings” and “the cases belonging to a traveler.” August 4, 2021 Denial of Reconsideration at TSDR 14. American Heritage Dictionary, ahdictionary.com.

⁶ Applicant criticizes the definition of “luggage” provided by the Examining Attorney arguing that it is too expansive. 7 TTABVUE 11. Although the Examining Attorney argues that the definition of “luggage” describes all of the goods in Applicant’s identification, “it is not sufficient [for purposes of relatedness] that a particular term may be found which may broadly describe the goods.” *In re The W.W. Henry Co., L.P.*, 82 USPQ2d 1213, 1215 (TTAB 2007).

convertible duffel-garment bags. Therefore, there is legal identity for at least “luggage” and “duffel bags” listed in Applicant’s identification with Registrant’s “garment bags for travel” listed in Registration No. 1552880.

We further find that the third-party registrations in the record establish relatedness for Applicant’s goods and both cited registrations. *See In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993) (Third-party registrations have probative value to the extent that they serve to suggest that such goods and services emanate from the same source); *In re Mucky Duck Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988) (same). Here, the third-party registration evidence submitted by the Examining Attorney shows that duffel bags, luggage, tote bags, briefcases, key cases, and all purpose carrying bags are types of goods that may be sold by the same entity under the same mark. August 4, 2021 Denial of Reconsideration at TSDR 15-78.

The relatedness of garment bags, luggage and duffel bags is also supported by some of the Internet evidence submitted by the Examining Attorney. The Tumi website (tumi.com) states that it sells “duffels” and “best selling garment bags,” also mentioning that it sells luggage under the Tumi mark (“Tumi luggage, carry-ons, duffels, and bestselling garment bags are strong, lightweight and engineered to endure”). January 14, 2021 Office Action at TSDR 4, 5. The luggagepros.com website sidebar menu, under the heading “garment bags,” lists not only garment bags but also luggage, duffel bags, and travel tote bags. The samsonite.com website side bar menu heading, under “luggage/garment bags,” lists garment bags and luggage. August 4, 2021 Denial of Reconsideration at TSDR 4, 5; January 14, 2021 Office

Action at TSDR 6, 7. Therefore, in addition to the legal identity with Applicant's luggage and duffel bags and Registrant's garment bags, the website evidence shows garment bags, duffel bags and luggage are related. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1203 (TTAB 2009) (Third-party website evidence is relevant evidence to show relatedness).

As to the wallets in Registration No. 5140603, the website evidence also shows wallets and duffel bags being sold under the same mark (samsonite.com); wallets, briefcases and duffel bags being sold under the same mark (menswarehouse.com and clava.com); duffel bags, wallets and suitcases (luggage) sold under the same mark (modoker.com); and wallets, key holders, luggage, briefcases and duffels sold under the same house mark (swissarmy.com). January 14, 2021 Office Action at TSDR 2-3, 6-12; August 4, 2021 Denial of Reconsideration at TSDR 6, 8,10-12.

Therefore, this evidence supports relatedness of Applicant's goods with those in Registration No. 5140603.

Applicant criticizes some of the website evidence as not showing relatedness of "all" of its goods (amerileather.com, luggagepros.com, hartman.com and herschel.com), arguing that "only the evidence from Samsonite and Mark and Graham arguably makes the Examining Attorney's point" that all of Applicant's goods and the cited registrants' goods emanate from the source. 7 TTABVUE 6. While we agree that some of the evidence does not show all of the goods listed in Applicant's amended identification, this fact does not discount the evidence that does show relatedness of some of the goods listed in the identification. As already stated, it is

not necessary that the Examining Attorney establish relatedness as to each item in a particular class for likelihood of confusion to be found.

Applicant also argues that because Applicant is a “high-end boat and yacht manufacturer,” and not a luggage or bag manufacturer, the “Board should not accord great weight to the Examining Attorney’s third-party use evidence, because it only tends to evidence the behavior of companies whose main business is the sale of bags rather than yachts. As such, it is of limited use here.” 7 TTABVUE 10.

However, the relevant inquiry in an *ex parte* proceeding focuses on the goods described in the application and registration, and not on real-world conditions. *See Stone Lion Capital Partners*, 110 USPQ2d at 1162 (Board must “give full sweep” to an identification of services regardless of registrant’s actual business); *In re Cook Med. Tech. LLC*, 105 USPQ2d 1377, 1384 (TTAB 2012) (the Board must “decide this *ex parte* appeal based on the information on the face of the cited registration; we do not read in limitations.”). Therefore, merely because Applicant is a yacht and boat manufacturer, we are not permitted to presume that its merchandise is any different from manufacturers whose business is to sell bags rather than yachts and boats.

Applicant also argues that the “examples of third-party uses and registrations” does not establish “that such practices are common,” pointing to its “submitted evidence of numerous third-party registrations which claim only the goods claimed in the registrations for the cited marks.” 7 TTABVUE 6. Applicant asserts that the Examining Attorney ignored or disregarded this evidence (showing registrations listing solely wallets or garment bags) which “suggests that there may not be as much

overlap with Applicant's goods as initially thought" and that "[c]ollectively, the third-party use and registration evidence furthers the conclusion that third parties do not commonly sell both Applicant's and registrants' goods, or at least accept it as evidence that cuts against it." 7 TTABVUE 6, 8.

However, the mere fact that third parties do not offer Applicant's goods does not undercut the probative value of third-party registrations or the website evidence that shows some parties do offer Applicant's and Registrants' goods under the same mark. *In re G.B.I. Tile and Stone Inc.*, 92 USPQ2d 1366, 1370 (TTAB 2009). There is no requirement for goods or services to be found related based on third-party registration evidence that all or even a majority of the sources of one type of goods must also be sources of the other type of goods. *Id.* Therefore, evidence showing only that the source of one product may not be the source of another product does not aid Applicant in its attempt to rebut this evidence. Additionally, the fact that some registrants list only a particular good in their identification does not necessarily establish that these registrants do not offer other goods such as Applicant's goods in the marketplace.

Applicant also argues that its "Class 18 goods are within the zone of expansion" of its prior registered WALLY marks for sea craft, yachts, powerboats, sailboats etc. because "they are typically used by consumers of yachts and yacht travel services," and points to its evidence of third-party registrations showing both boats and bags being offered under the same mark. 7 TTABVUE 8-9. Applicant submits that the Examining Attorney did not explain why this evidence was unpersuasive. 7 TTABVUE 8.

However, as the Examining Attorney pointed out, in her brief (9 TTABVUE 11-12), a zone of expansion argument is not applicable in an ex parte proceeding. *In Re Kysela Pere et Fils, Ltd.* 98 USPQ2d 1261, 1266 (TTAB 2011). Instead, “in the context of an ex parte proceeding the analysis should be whether consumers are likely to believe that the [goods or] services emanate from a single source,” rather than whether Applicant is likely to expand its particular business to include the goods of the cited Registrants. *Id.*

In sum, we find the goods in Registration No. 1552880 are legally identical in part and otherwise related to Applicant’s goods, and the goods in Registration No. 5140603 are related to Applicant’s goods. This *DuPont* factor favors a finding of likelihood of confusion.

D. Channels of Trade and Classes of Consumers

We turn to the third *DuPont* factor which requires us to consider “the similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567. Applicant submits that Applicant’s and Registrants’ goods are sold to completely different markets and consumers. Applicant argues that “[c]onsumers of yachts tend to be a very niche, wealthy subset of the general consuming population. The purchasers of Applicant’s Class 18 goods are likely to be the same as those of Applicant’s expensive yachts and boats.” 7 TTABVUE 9; July 14, 2021 Request for Reconsideration 78-106; 119-155.

However, neither Applicant’s identification nor Registrants’ identification is restricted to classes of consumers or trade channels, and “[t]he third *DuPont* factor—

like the second factor—must be evaluated with an eye toward the channels specified in the application and registration, not those as they exist in the real world.” *In re Detroit Ath. Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018). Therefore, the classes of purchasers of Applicant’s and Registrants’ goods encompass general consumers.

With regard to the legally identical in part goods in Registration No. 1552880, we may presume that these goods will move in the same trade channels. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same). With regard to goods we have found related, we may presume that they move in all normal channels for those goods and are available to all prospective purchasers of the relevant goods. *Packard Press, Inc. v. Hewlett-Packard Co.*, 227 F.3d 1352, 56 USPQ2d 1351, 1357 (Fed. Cir. 2000) (“When the registration does not contain limitations describing a particular channel of trade or class of customer, the goods or services are assumed to travel in all normal channels of trade”).

The Examining Attorney’s third-party website evidence discussed above also shows that Applicant’s and Registrants’ goods are offered together on related website pages in online stores, for example, Samsonite, Tumi, Men’s Warehouse. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d at 1203; *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1272-73 (TTAB 2009) (website evidence shows same or overlapping channels of trade and classes of customers).

We find that the channels of trade and classes of consumers will overlap. This *DuPont* factor favors a finding of likelihood of confusion.

E. Conditions of Sale

The fourth *DuPont* factor considers “the conditions under which and buyers to whom sales are made, i. e. ‘impulse’ vs. careful, sophisticated purchasing.” *DuPont*, 177 USPQ at 567.

Applicant argues that its consumers are those who purchase yachts and are “more sophisticated than the average consumer” and “well-informed about the WALLY brand” and less likely to confuse Applicant’s mark and the cited marks. 7 TTABVue 9. Applicant has provided information about its yachts to support this contention. July 14, 2021 Request for Reconsideration at TSDR 78-106.

As previously pointed out, neither Applicant’s nor Registrants’ goods are limited to any particular price point or class of purchaser, and we must presume that the goods are provided at all price points and available to all classes of consumers. *See In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1413 (TTAB 2015), *aff’d*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017). Therefore, we must assume that the types of buyers of Applicant’s and Registrants’ goods include both the sophisticated yacht owner as well as the ordinary consumer shopping for luggage, tote bags, garment bags, wallets and carrying bags.⁷ *Stone Lion Capital Partners*, 110 USPQ2d at 1163 (applicable

⁷ Applicant submitted articles about gear for non-yacht owners who will be traveling on a yacht or boat: crew of a superyacht (collapsible holdall), or a guest on a yacht charter (e.g., soft duffel) or boating trip (soft sided luggage, duffel). July 14, 2021 Request for Reconsideration at TSDR 120, 128, 135.

standard of care is least sophisticated consumer). In addition, even sophisticated purchasers are not immune from confusion as to the origin of the respective goods, especially when, as here, the similar nature of the marks and the relatedness of the goods outweigh any sophisticated purchasing decision. *See HRL Associates, Inc. v. Weiss Associates, Inc.*, 12 USPQ2d 1819 (TTAB 1989), *aff'd*, *Weiss Associates, Inc. v. HRL Associates, Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990) (similarities of goods and marks outweigh sophisticated purchasers, careful purchasing decision, and expensive goods). *See also In re Research Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986), *citing Carlisle Chem. Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970) (“Human memories even of discriminating purchasers ... are not infallible.”).

We find this *DuPont* factor neutral.

IV. Conclusion

We find that the marks are similar, the goods are identical in part and closely related, and the channels of trade and classes of consumers overlap. Therefore, confusion is likely.

Decision: The Section 2(d) refusal to register Applicant’s mark is affirmed.